ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Offering	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	
	)	

OPPOSITION OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

The Ohio Public Utilities Commission ("PUCO") attempts to frustrate the FCC's calling party pays initiative by filing a petition for reconsideration which simply repeats arguments that the FCC has considered and rejected in its Declaratory Ruling. As an initial matter, PUCO misunderstands the affect of Congress' 1993 amendments to Section 332 and Section 2(b) on the FCC's authority over commercial mobile radio services. While PUCO believes that Section 332 provides the states with concurrent jurisdiction over "other terms and conditions" of CMRS services, PUCO fails to understand that any such concurrent jurisdiction provides the Commission with the authority to preempt the states when any intrastate matter would affect interstate communications.

Moreover, Title III of the Communications Act grants the Commission broad jurisdiction to regulate all aspects of CMRS services. The 1993 amendment to Section 2(b) in conjunction with Section 332, create a uniform federal regulatory framework for CMRS services. Suggesting that states retain the authority over "intrastate" CMRS, PUCO plainly misunderstands Congress' intent in amending Section 2(b) to provide the FCC with substantive authority over CMRS. Congress' intent to provide the FCC with CMRS jurisdiction is evidenced by the legislative history of Section 332.

Contrary to PUCO's assertions, CPP is not merely a landline billing option. As the FCC concluded, CPP offerings satisfy the relevant statutory definition and FCC rule definition for CMRS. Indeed, the FCC carefully determined that CPP offerings fall under the "mobile service" definition of Section 3 of the Act and its own definition of CMRS, which includes the same elements as the Act's definition commercial mobile service.

Moreover, PUCO's suggestion that any service offered by a LEC would be an intrastate, non-CMRS service within the regulatory authority of state commissions, misstates the law and Commission precedent concerning LEC-CMRS interconnection. The Commission previously has acknowledged and the courts have affirmed that Section 332 in tandem with Section 201 is a basis for jurisdiction over LEC-CMRS interconnection. Indeed, Section 201(b), in conjunction with Section 332(c)(3), supplies the Commission with jurisdiction over all CPP services, including services that the LEC provides in conjunction with the CPP offering.

Finally, there is no statute or policy preventing a calling party from being contractually bound to compensate more than one carrier for the same call. An enforceable agreement or an implied-in-fact contract between the calling party and the CMRS provider can be established through informational tariffs or regular informational reports filed with the FCC. Notification that includes information that charges will apply for completed CPP calls and which allows callers the opportunity to terminate the call also creates "informed consent" for calling parties.

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The Personal Communications Industry Association ("PCIA") hereby submits its Opposition to the Petition for Reconsideration and Clarification filed by the Public Utilities Commission of Ohio ("PUCO") on the Declaratory Ruling issued in the above referenced proceeding.[1]

I. INTRODUCTION

PCIA is the leading international trade association representing the personal communications services ("PCS") industry. PCIA has been instrumental in advancing regulatory policies, legislation and technical standards that have helped launch the age of personal communications services. PCIA represents the chief providers of wireless voice and data communications to both consumers and businesses. Among others, PCIA's member companies include PCS licensees and participants in the cellular, paging, ESMR, SMR, mobile data and

[1] Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Petition for Reconsideration and Clarification and Further Comments on Jurisdictional Issues Submitted by the Public Utilities Commission of Ohio*, WT Docket No. 97-207, FCC 99-137 (filed August 16, 1999) ("Petition").

cable industries.[2] The members of the wireless community generally agree that implementation of a nationwide mechanism for CPP would increase domestic wireless telephone usage and enhance the competitive potential of wireless alternatives. Therefore, PCIA has a strong interest in the outcome of this proceeding, including rejection of the Ohio Petition, which seeks to undermine the Federal Communications Commission's ("FCC" or "Commission") CPP initiative. PUCO simply repeats arguments that the Commission has squarely considered and rejected in its Declaratory Ruling. Rather than presenting the Commission with useful information on how CPP could be properly implemented, PUC merely re-circulates old propositions. Whatever PUCO's disagreements over the Commission's findings, they provide no basis to overturn a ruling that was a careful, rational and judicially sustainable decision.

As demonstrated in this Opposition, PUCO first misunderstands the affect of Congress' amendment in 1993 to Section 332 and Section 2(b) on the Commission's jurisdiction over CMRS.[3] PUCO also misinterprets the approach taken by the FCC in the Declaratory Ruling and misapplies the statutory and FCC definitions of CMRS services. Finally, PUCO ignores the basics of how interconnection works to reach its conclusion that states are free to regulate aspects of CPP. PCIA urges the FCC to deny the petition for reconsideration and affirm that CPP is a CMRS service subject to federal regulation.

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[2] PCIA's seven member sections include: (1) the Personal Communications Services Alliance; (2) the Mobile Wireless Communications Alliance; (3) the Paging and Messaging Alliance; (4) the Private Systems Users Alliance; (5) the Site Owners and Managers Alliance; (6) the Wireless Broadband Alliance; and (7) the Associate Members.

[3] Even if the Commission does not fully concur with PCIA's jurisdictional analysis, PUCO's Petition for reconsideration must nonetheless be dismissed for all of the reasons set forth in the Commission's Declaratory Ruling.

II. THE COMMISSION HAS THE STATUTORY AUTHORITY TO IMPOSE NATIONAL RULES FOR CPP.

A. PUCO Misreads Section 332 and Section 2(b).

According to PUCO, Section 332 of the Act provides the states with *concurrent* jurisdiction over "other terms and conditions" of CMRS services. Even accepting PUCO's characterization as correct, PUCO fails to recognize that any such concurrent jurisdiction provides the Commission with the authority to preempt the states when any intrastate matter would affect interstate communications. Indeed, under Section 2(a), the Commission has preemptive power to go beyond express statutory provisions when it has the authority, as it does over CMRS service.[4]

Further, Title III of the Communications Act grants the Commission broad jurisdiction to license and regulate CMRS services generally, with states given only a *limited* role, as specified in Section 332(c)(3)(A). Indeed, Section 332(c)(3)(A) of the Act provides that ". . . no state or local governments shall have any authority to regulate the entry of or rates charged by any

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[4] 47 U.S.C. § 152(a). It is a well-established principle that a federal agency may preempt when it is acting within the scope of its congressionally delegated authority. *Louisiana Pub. Serv. Comm'n v. FCC,* 476 U.S. 355, 369 (1986) (citations omitted). The Communications Act, as enacted in 1934, established a dual system of state and federal regulation over telecommunications. Section 2(a) of the Act granted the Commission jurisdiction over "all interstate and foreign commerce in wire and radio communications," while section 2(b) expressly reserved to the states jurisdiction over "intrastate communications by wire or radio." 47 U.S.C. §§ 152(a)-(b). In *Louisiana PSC* the Supreme Court stated that the Commission's power to preempt state regulation of intrastate communications is limited to situations where: (1) it is impossible to separate the interstate and intrastate components of the Commission's regulation; and (2) the state regulation would negate the Commission's lawful authority over interstate communications. The "impossibility exception" standard is met when: (1) the matter to be regulated has both interstate and intrastate aspects; (2) FCC preemption is necessary to protect a valid federal regulatory objective; and (3) state regulation would 'negate the [FCC's] exercise . . . of its own lawful authority' because regulation of the interstate aspects of the matter cannot be 'unbundled' from regulation of the intrastate aspects. *Louisiana PSC*, 476 U.S. at 375; *Maryland Pub. Serv. Comm'n v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990) (citations omitted).

commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from regulating other terms and conditions of mobile service."[5] States are given a very limited role in the regulation of CMRS. The 1993 amendment to Section 2(b) in conjunction with Section 332, which create a uniform federal regulatory framework for CMRS services, confirms this fact.

According to PUCO, "Congress' use of the phrase 'notwithstanding section 152(b)' unequivocally demonstrates that the plenary State authority over intrastate CMRS was retained. . ."[6] This reading of Section 2(b) in conjunction with Section 332 is not only incorrect, it completely ignores the legal significance of the amendment and applies a pre-section 332 jurisdictional model used for landline common carriers. The sole purpose of Section 2(b) is to provide some limitation of the Commission's authority over intrastate telecommunications matters.[7] *Any* exception to that limitation, therefore, is extremely significant. Indeed, Congress inserted a reference to Section 332 (giving the Commission authority over CMRS) into Section 2(b)'s initial clause, which provides exceptions to Section 2(b)'s general exclusion of the Commission's jurisdiction over intrastate telecommunications. By amending section 2(b) to except out section 332 from the states' jurisdictional authority, Congress created a uniform *federal* regulatory framework for CMRS. As the Conference Report states, the amendment to section 2(b) was made to "clarify that the Commission has the authority to regulate commercial mobile services."[8]

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[5] 47 U.S.C, § 332(c)(3)(A).

[6] Petition at 11.

[7] *See Houston, E., et al. v. U.S.*, 234 US 342, 358 (1914) (*Shreveport Rate Cases).*

[8] H.R. Rep. No. 213, 103rd Cong., 1st Sess. 497 (1993).

Moreover, the statutory design of Section 332(c)(3)(A), which preempts state authority over rate and entry regulation of CMRS "notwithstanding sections 152(b) and 221(b) . . ." shows that Congress preempted the states from substantive regulation of CMRS *without regard* to any residual jurisdiction a state may claim under Section 2(b) of the Act. Thus, the *only* authority states have over CMRS is that which is provided in 332(c)(3)(A).

B. The Legislative History of Section 332 Illustrates the FCC's Jurisdiction Over CMRS Service — A Jurisdictionally Interstate Service.

Congress' intent to provide the Commission with jurisdiction over CMRS is evidenced by the legislative history of Section 332. Indeed, the legislative history of Section 332 demonstrates the purpose underlying that provision, *i.e.*, to "establish a Federal regulatory framework to govern the offering of all commercial mobile services."[9] The Conference Report further explains that "the Conferees intend[ed] that the Commission . . . permit states to regulate radio service provided for basic telephone service if subscribers have no alternative means of obtaining basic telephone service . . . [and] it is not the intention of the [C]onferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means." *Id.* at 493. Similarly, the House Report concludes that these statutory changes were intended to "foster the growth and development of mobile services that, *by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure.*"[10]

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[9] H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993).

[10] H.R. Rep. No. 111, 103rd Cong. 1st Sess. 260 (1993).

III. THE DECLARATORY RULING IS UNAMBIGUOUS AS TO THE JURISDICTIONAL ISSUES SURROUNDING CPP.

A. CPP Has Been Classified a CMRS Service Offering.

In its Declaratory Ruling, the Commission determined that CPP offerings are properly classified as CMRS services and thus operate under the Title III framework of the Communications Act, (the "Act") including Section 332.[11] Despite PUCO's claims that the Declaratory Ruling contains jurisdictional ambiguities, it is plain that the Commission defined CPP as a CMRS service subject to Section 332 of the Act. Indeed, the Commission unequivocally states that "[w]e find that CPP offerings, as defined in paragraph 2, are properly classified as CMRS services pursuant to Section 332 of the Act."[12]

According to PUCO, the Declaratory Ruling acknowledges that states have a "legitimate interest" to regulate consumer protection matters, and thus, the FCC's jurisdictional approach, *i.e.*, to develop a uniform regulatory framework for CPP, is "unclear" at best.[13] The Commission's mere "recognition" that states have a legitimate interest in consumer protection issues does not create ambiguity regarding the Commission's decision. PUCO's assertion also ignores the Commission's consistent effort to give comity to state regulatory concerns when possible. In the *Universal Service* proceeding, for instance, the Commission sought comment and received a tremendous amount of feedback from the states regarding implementation of the

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[11] It is a fundamental tenet of law that an agency charged with administering a statute is entitled to considerable deference so long as the agency's interpretation is based on a permissible construction of the statute. *See Chevron, USA v. NRDC*, 467 U.S. 837, 842-45 (1984).

[12] Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 97-207, FCC 99-137 (rel. July 7, 1999) ("*Notice*").

[13] Petition at 5.

federal universal service regime.[14] This input from states, as well as other industry participants, played a part in the Commission's formation of the *federal* universal service programs. The FCC's recognition of state interest in matters involving CPP implementation is no basis for finding any ambiguity in the Declaratory Ruling.

B. PUCO Misinterprets the Unambiguous Jurisdictional Approach Taken in the Declaratory Ruling.

PUCO appears to assert that the Commission is attempting to avoid expressly preempting state authority by failing to address whether the consumer protection issues associated with CPP fall within the "other terms and conditions" language of Section 332 or fall under "rate or entry regulation." Fundamentally, PUCO fails to recognize that state authority over CMRS is limited. Congress provided that CMRS is licensed and substantively regulated at the FCC and not by the states.[15] Section 2(b) of the Act, as amended states that "[e]xcept as provided in . . . section 332 . . . nothing in this section shall be construed to apply or give the Commission jurisdiction with respect to . . . intrastate communication service by wire or radio of any carrier. . . ."[16] To understand the scope of state authority over CMRS, Section 332 must be consulted. Under this statutory framework, the Commission is free to determine that regulation of CPP falls outside of the limited scope of authority Congress enumerated in Section 332 for the states.[17]

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[14] *See* Federal State Bd. on Universal Service, *Report and Orde*r, 12 FCC Rcd 8776-9291-9298 at Appendix A (1997). The state commissions of Alabama, Alaska, California, Delaware, Florida, Illinois, Kansas, Kentucky, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, Utah, Vermont, Washington and Wyoming participated in the proceeding.

[15] 47 U.S.C. § 152(b).

[16] *Id.*

[17] 47 U.S.C. § 332(c)(3)(A).

Contrary to Ohio's claim that the Commission should "come clean" regarding its intentions to preempt state regulation of CPP, the Commission has openly stated its intent to implement a uniform, nationwide framework for CPP. While it seeks *input* from the states, the FCC is neither authorized nor required to share over the terms and conditions of how the service is structured.[18] Moreover, the states are not deprived of a role in this proceeding. The Commission has requested comment on several yet unresolved issues related to CPP, including state regulation of LEC-CPP billing and collection.[19] Indeed, a number of states, including Ohio, have filed comments addressing this issue, presenting their views to the Commission.[20]

IV. THE DECLARATORY RULING PROPERLY CONCLUDED THAT CPP IS A CMRS SERVICE

A. CPP Is Not Merely a Billing Service.

PUCO also claims that CPP is not a CMRS service but merely a landline billing option. This argument, of course, was squarely considered and rejected in the Declaratory Ruling. As the Commission concluded, CPP offerings satisfy the relevant statutory definition and FCC rule definition for CMRS.

Specifically, under Section 332, the term

> "commercial mobile radio service" means any mobile service (as defined in Section 3) that is provided for profit, and makes interconnected service

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[18] *Notice* at ¶ 42.

[19] *Notice* at ¶ 68.

[20] *See, e.g.*, Comments of the Connecticut Department of Public Utility Control; California Public Utilities Commission; Florida Public Service Commission; New York Department of Public Service; Public Service Commission of Wisconsin; Public Utilities Commission of Ohio; Washington Utilities and Transportation Commission.

> available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public . . . .[21]

CPP offerings fall under the "mobile service" definition of Section 3 of the Act.[22] Parties calling CPP customers will be using radio spectrum to transmit communications to (and from) a mobile handset or receiver. Once the Commission acts to remove the impediments to CPP viability, CPP also will be provided "for profit." CPP will be an offering that compensates the CMRS provider for its costs of providing the airtime to the mobile subscriber. In addition, CPP meets the "interconnected service" requirement of Section 332(d). Use of CPP requires the calling party to send a message over the public switched network to reach the mobile phone of the CMRS subscriber.[23] Finally, CPP satisfies the statutory requirement of being "available . . . to the public." CMRS providers will offer CPP on nondiscriminatory terms and conditions to all potential subscribers of CMRS service. While CPP may not be an attractive service option for all CMRS subscribers, the Commission correctly recognized in its companion Notice of Proposed Rulemaking that CPP offers new options for CMRS service to new market segments.[24]

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[21] 47 U.S.C. § 332(d).

[22] "Mobile service" is defined as a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. *See* 47 U.S.C. § 153(27). "Radio communication" is in turn defined as the transmission by radio of writing, signs, pictures and sounds of all kinds, including all instrumentalities, facilities, apparatus and services (among other things, the receipt, forwarding and delivery of communications) incidental to such transmission. *See* 47 U.S.C. § 153(33).

[23] Ohio inexplicably contends that CPP customers are not interconnected with the public switched network unless a landline carrier completes a call to a wireless handset. This assertion is fundamentally incorrect as explained *infra*.

[24] *Notice* at ¶ 21.

CPP also meets the Commission's definition of CMRS, which includes the same three elements as the Act's commercial mobile service.[25] Section 20.3 of the Commission's rules defines a mobile service that as on which is: (a)(1) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain; (2) an interconnected service; and (3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) the functional equivalent of such a mobile service described in paragraph (a) of this section.[26] CPP meets both the statute's and the Commission's criteria for classification as a CMRS service offering.[27]

B. "CPP-Like" Services, Including LEC/CMRS Interconnection Arrangements, Are Subject to Commission Regulation.

PUCO's suggestion that "any service offered by a LEC would unequivocally be an intrastate, non-CMRS service within the regulatory domain of State commissions," misstates the law and Commission precedent concerning LEC-CMRS interconnection and the import of the Commission's Declaratory Ruling.

In its *Local Competition* proceeding, for instance, the Commission definitively concluded that:

> "Sections 251, 252, 332 and 201 are designed to achieve the common goal of establishing interconnection and ensuring interconnection on terms and conditions that are just, reasonable, and fair. It is consistent with the broad

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[25] Implementation of Section 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd at 1411, 1424 (1994).

[26] 47 C.F.R. § 20.3(a)-(b).

[27] Contrary to PUCO's claim, classification of CPP as a CMRS service is consistent with the *Arizona* decision. The *Arizona* decision, which centered on whether CPP-related billing practices fell within the "other terms and conditions" language of Section 332, implicitly characterized CPP as a CMRS service. *Notice* at ¶ 18.

> authority of these provisions to hold that we may apply sections 251 and 252 to LEC-CMRS interconnection."[28]

The Commission also "acknowledge[d] that section 332 in tandem with section 201 is a basis for jurisdiction over LEC-CMRS interconnection."[29]

This proposition was affirmed by the Eighth Circuit.[30] While the Eighth Circuit vacated key portions of the Commission's broader landline local interconnection initiatives, the court specifically recognized the special nature of the Commission's jurisdiction over CMRS and confirmed the steps the Commission had taken in the *Local Competition Order* that reflected the unique jurisdictional nature of CMRS. Specifically, the court concluded that:

> [b]ecause Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by . . . CMRS providers, *see* 47 U.S.C. §§ 152(b) (exempting the provisions of section 332, 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers.[31]

The Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Bd.* enunciated a significantly broader scope of FCC authority over the development of local telecommunications than the Eighth Circuit. Indeed, the Supreme Court held that Section 201(b) constitutes an explicit grant of FCC jurisdiction to make rules governing matters to which the Communications

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[28] Implementation of the Local Competitions Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16005 (1996).

[29] *Id.* The Commission went on to explain that "[s]hould the Commission determine that the regulatory scheme established by sections 251 and 252 does not sufficiently address the problems encountered by CMRS providers in obtaining interconnection on terms and conditions that are just, reasonable and nondiscriminatory, the Commission may revisit its determination not to invoke jurisdiction under section 332 to regulate LEC-CMRS interconnection rates." *Id.* at ¶ 1025.

[30] *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n. 21 (8th Cir. 1997)

[31] *Id.*

Act applies.[32] The Act, as amended, unequivocally applies to interconnection for local and intrastate as well as interstate services. The Court further concluded that the use of the qualifier "interstate or foreign" in Section 201(a) to limit the class of common carriers with the duty of providing communications services does not limit the class of provisions that the Commission has authority to implement. Thus, Section 201(b), in conjunction with Section 332(c)(3), supplies the Commission with jurisdiction over all CPP services, including services that the LEC provides in conjunction with the CPP offering. While the FCC has not explicitly asserted its broad jurisdiction over CMRS-LEC interconnection arrangements (*i.e.*, it has not modified the negotiation framework for CMRS carriers to file agreements with the FCC rather than at the states) there is absolutely no question of the Commission's authority to modify its rules and review CMRS-LEC interconnection directly.

C. The Subscription Relationship Between the Calling Party and the Landline Carrier Does Not Preclude the Establishment of Other Carrier-Customer Relationships.

PUCO states, without any legal support, that a calling party to a CPP subscriber is not a CMRS customer, but a LEC wireline customer. This contention, however, ignores the basic fact that nothing precludes a telephone subscriber from having a relationship with more than one carrier for a single call. There is no statute or policy preventing a calling party from being contractually bound to compensate more than one carrier for the same call. One common scenario is when a subscriber makes an interexchange call. There, the calling party pays the interexchange carrier for both the IXC's charges and the ILEC's access charges, which the IXC remits to the ILECs handling the local portions of the call. The IXC and two ILECs collaborate

[32] *AT&T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. 721, 730 (1999).

to complete an interexchange call and the revenue from the customer is divided. This practice is similar to the calling party's relationship with both the LEC and the CMRS provider in CPP.

As evidenced in the comments filed on the *Notice*, the relationship between the calling party and the CMRS subscriber can be established in several ways.[33] Informational tariffs or regular informational reports can be used to create an enforceable agreement or an implied-in-fact contract between the calling party and the CMRS provider. Alternatively, many have argued and the Commission has proposed that notification that includes information that charges will apply for completed CPP calls and which allows callers the opportunity to terminate the call also creates "informed consent" for calling parties.[34] The Commission has also stated: "We note that in a 1997 decision regarding 'casual calling' we suggested that carriers have reasonable options other than tariffs to establish contractual relationships with casual callers that would legally obligate such callers to pay for their services, and that providing the caller . . . [with adequate information] prior to the completion of the call would establish an enforceable contract between the caller and the carrier."[35] Thus, the Commission has already concluded that CPP callers are CMRS service customers as well as landline local telephone customers.

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[33] *See, e.g.,* Bell Atlantic Comments at 2-3 (stating that the FCC's notification mechanism is sufficient to establish a contract between the caller and the CMRS provider); CTIA comments at 28-29 (urging the FCC to adopt informational mechanisms, *i.e.,* informational tariffs pursuant to Section 203, model informational contracts pursuant to Section 211 or special CPP service reports pursuant to Section 219, to ensure privity of contract between CMRS carriers and the CPP caller); AirTouch Comments at 50 (stating that consumers placing a CMRS call to a CPP subscriber are contractually liable for the associated charges).

[34] Bell Atlantic Comments at 2-3; Comments of the United States Cellular Corporation at 9; Cincinnati Bell Comments at 4; GTE Comments at 25-27.

[35] Notice at ¶ 51.

D. Contrary to PUCO's Contention, CPP Is Interconnected to the PSTN and CPP's Status as CMRS Is Not Dependent on a Particular Landline Caller's Action or Inaction.

PUCO erroneously contends that CPP customers are unable to receive calls from the PSTN in those instances when the landline caller refuses to "become[] a customer of the same CMRS provider."[36] PUCO goes on to allege that such CPP customers are not connected to the PSTN, but only to other customers of the same CMRS provider.[37] This contention defies logic and ignores that CMRS carriers require interconnection with the ILEC for both CPP and non-CPP related services. Of course, CPP customers can also make outgoing calls, which necessarily require interconnection with the ILEC network. The provision of a notification message by the CMRS provider to the landline caller (who may choose not to complete a particular call) also requires interconnection with the ILEC network. Thus, any suggestion that CPP only connects a CMRS customer to a private network consisting of only the customers of that same CMRS provider and not to the public switched telephone network is mistaken, contrary to the facts and should be summarily dismissed.

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[36] Petition at 9.

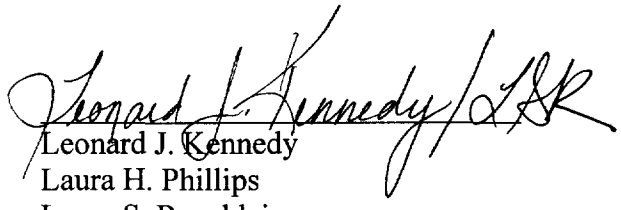
[37] PUCO also misreads Section 20.3 of the Commission's rules. According to Ohio, "CPP does not meet the criteria for being a CMRS service because CPP does not 'give subscribers the capability to communicate or receive communications for all other users on the public switched network . . . ." Petition at 9. This interpretation suggests that one-way communications services, including one-way paging, are not CMRS services. This suggestion is plainly wrong.

V. CONCLUSION

PUCO misunderstands the import of Section 332 and the amendment to Section 2(b) on the Commission's jurisdiction over CMRS. PUCO also misunderstands the approach taken by the FCC in the Declaratory Ruling and misapplies the statutory and FCC definitions of CMRS services to reach the conclusion that CPP is a LEC billing service subject to state regulation. Finally, PUCO disregards the basics of interconnection in arguing that that states may regulate LEC-provided aspects of CPP. PCIA therefore requests that the Commission deny the petition for reconsideration and affirm that CPP is a CMRS service subject to federal regulation.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION



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October 4, 1999

Certificate of Service

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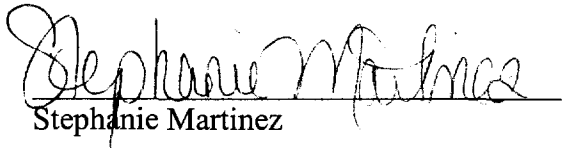

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